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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) NC14643US/0038-023US1							
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>February 19, 2008</u></p> <p>Signature <u><i>Brenda L. McCalister</i></u></p> <p>Typed or printed name <u>Brenda L. McCalister</u></p>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Application Number 09/980,549</td> <td style="width: 50%; padding: 5px;">Filed April 5, 2002</td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor Tommy Koistinen</td> </tr> <tr> <td style="padding: 5px;">Art Unit 2626</td> <td style="padding: 5px;">Examiner James S. Wozniak</td> </tr> </table>		Application Number 09/980,549	Filed April 5, 2002	First Named Inventor Tommy Koistinen		Art Unit 2626	Examiner James S. Wozniak
Application Number 09/980,549	Filed April 5, 2002								
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<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 54,760 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> </div> <div style="width: 45%; text-align: center;"> <p><u><i>Shane A. Kennedy</i></u> _____ Signature Shane A. Kennedy _____ Typed or printed name 208-286-1013 _____ Telephone number February 19, 2008 _____ Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>									
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>									

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9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Tommy Koistinen	Examiner:	James S. Wozniak
Serial No.:	09/980,549	Group Art Unit:	2626
Filed:	April 5, 2002	Docket No.:	NC14643US/0038-023US1
Title:	Adaptive Rate Matching for Data or Speech		

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant has reviewed and considered the Final Office Action mailed on November 16, 2007. Applicants respectfully submit that the rejections of record in the above-identified patent application are clearly not proper and are without basis as follows, and request review of these rejections based on the below remarks. Claims 1-9 are pending in the Application, of which claims 1, 4, and 9 are independent.

REMARKS

Suzuki in view of Yletyinen fail to disclose or suggest why a person skilled in the art would adjust a transfer rate of a transceiver (which comprises a codec and a modem) for a circuit switched network based on a detected load in a packet switched network.

Claim 1 recites:

A device, said device being a gateway and being configured to establish an interface for transmitting data to and receiving data from a packet network, comprising:
a plurality of transceiver units, each of said plural units being operable with variable transfer rates;

*a detecting unit configured to detect a load upon said packet network; and
a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load;*

wherein said control unit is configured to provide each of said plurality of transceiver units with different priorities and to adjust the transfer rate of a transceiver unit with a higher priority on a higher value than the transfer rate of a transceiver unit with a lower priority;

wherein said transceiver units comprise a modem for modulating and demodulating non-speech data and a codec for encoding and decoding speech data for voice over Internet protocol;

wherein said control unit is configured to provide said codec with a higher priority than the modem, and

wherein said gateway is operatively disposed between a plurality of networks.

(Emphasis added).

The Office Action dated November 16, 2007, asserts that column 6, lines 1-12, and column 10, lines 61-65 of Suzuki et al., U.S. Patent No. 5,493,610, disclose a “detecting means for detecting the load upon a *network circuit*.” Office Action, p.4 (emphasis added). This fails to meet the limitation of claim 1, which recites detecting a load upon a *packet network*. Indeed, Suzuki is entirely directed to a *circuit switched network*, and not a *packet switched network*, as discussed in the third paragraph of page 6 of the Amendment and Response filed on August 14, 2007. Therefore, Suzuki does not disclose or suggest “a detecting unit configured to detect a load upon said packet network,” as recited in claim 1.

The Office Action cites Yletyinen, “*The Quality of Voice Over IP*,” as disclosing device implementation in a Voice over Internet Protocol (VoIP) gateway. The Office Action cites page 8 of Yletyinen as disclosing “a VoIP gateway capable of decoding and encoding speech for [VoIP], which contains multiple transmission/receiving means corresponding to telephone and IP

networks for the reception/transmission of speech and other non speech data types.” The Office Action cites page 42 of Yletyinen as disclosing a VoIP gateway “capable of adjusting a frame transmission rate in order to respond to congestion, wherein audio (*i.e., speech*) data rates receive priority over the rates for other types of data” (emphasis in original). Yletyinen therefore discloses adjusting a frame or packet rate *within the VoIP (packet switched) network* based on congestion within the *same* VoIP (packet switched) network.

However, these references provide no suggestion or motivation for adjusting a transfer rate of a transceiver such as a codec or modem (which is part of a *circuit switched* network in Suzuki) based on a congestion state or load of a *packet switched* network. Therefore, they do not disclose or suggest “a control unit configured to adjust the transfer rate of said transceiver unit in response to the detected load [upon said packet network],” as recited in claim 1.

Claim 1 further recites that the “control unit is configured to provide said codec with a higher priority than the modem.” The Office Action cited page 42 of Yletyinen as disclosing “audio (*i.e., speech*) data rates receive priority over the rates for other types of data” (emphasis in original). However, the cited portion of Yletyinen lists audio data third out of four data types, and therefore does not disclose giving speech data priority over non-speech data: “[t]he media degradation order is: video, data, audio, control.” Further, Yletyinen does not describe how this degradation is achieved. Yletyinen makes no disclosure of achieving the degradation by controlling the source of the data, as recited by claim 1: claim 1 recites the “control unit configured to adjust the transfer rate of said transceiver unit” and that the “control unit is configured to provide said codec [which is comprised by the transceiver unit] with a higher priority than the modem.” Yletyinen discloses only reducing frame or packet rates, reducing bit rates, or turning of media of lesser importance and returning a busy signal. Therefore, no combination of Suzuki and Yletyinen discloses or suggests a “control unit [] configured to provide said codec with a higher priority than the modem,” as recited in claim 1.

For the foregoing reasons, Applicant respectfully submits that no combination of Suzuki and Yletyinen discloses or suggests the elements of claim 1, and requests that the rejection of claim 1 be withdrawn. Applicant further requests that the rejections of claims 2-9 be withdrawn for the same reasons as claim 1.

Conclusion


Applicant respectfully submits that the claims are in condition for allowance and earnestly requests notification to that effect. The Pre-Appeal Panel is invited to telephone Applicant's attorney (208-286-1013) to facilitate prosecution of this Application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3521.

Respectfully submitted,

Brake Hughes Bellermann LLP
Customer Number 53666
208-286-1013

Date February 19, 2008

By: 
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